MA Joseph Capital Sdn Bhd v Pannirselvam a/l Mannar & Ors and other appeals

COURT OF APPEAL (PUTRAJAYA) — APPEAL NO B-02(NCVC)(W)-994–06 OF 2024, B-02(NCvC)(W)-995–06 OF 2024 AND B-02(NCvC)(W)-1000–06 OF 2024
MOHD NAZLAN, FAIZAH JAMALUDIN AND AHMAD FAIRUZ JJCA
24 SEPTEMBER 2025

Contract — Illegality — Contravention of law — Moneylenders Act 1951 ('the MA') — Lawyer arranged for borrower to obtain loans from various parties ('lenders') by securing loans against sale and purchase agreements ('SPAs') over borrower's lands in favour of lenders — Whether loans that borrower obtained were much less than what was asked for as substantial upfront deductions were made for interest payments and legal charges — Whether lenders were not licensed moneylenders under MA — Whether SPAs were not genuine sale transactions but an illegal moneylending arrangement that contravened the MA, was null and void and could not be enforced

The appellant in Appeal 995 and 1000 ('AJK') urgently required funds and approached the first respondent ('Pannir') to help source for it. Pannir managed to get the third to ninth respondents in Appeal 995 and the third to sixth respondents in Appeal 1000 ('the lenders') to loan varying sums of monies to AJK as and when the latter required it. In return, AJK agreed to pledge its lands as collateral and also to pay upfront interest payments on the loans and legal fees to Pannir's law firm before each loan sum was released. The loans were secured by sale and purchase agreements ('SPAs') — 16 in total — prepared by Pannir's firm over AJK's lands in favour of the lenders. The purchase prices under the 16 SPAs added up to RM9.44m, but out of that amount, AJK only received RM6,193,160. The remainder RM3,246,840 went towards payment of upfront interest payments and legal fees. When AJK subsequently discovered that several of its lands under the SPAs had been transferred to the lenders, it sued Pannir and his law firm partner (the second respondent) and all the lenders, contending that the SPAs were not genuine property sale transactions but part of an illegal moneylending arrangement that contravened the Moneylenders Act 1951. In their defence, Pannir and the second respondent maintained that the 16 SPAs were genuine as each of them was accompanied by an option to purchase document ('LOP') that allowed AJK to remain in possession of the lands and rent them from the lenders for a specified period whilst making payments towards a repurchase of the lands. The respondents submitted that if the court were to find that the arrangement between the parties was illegal, then it should also find that AJK was equally complicit in the illegality and deny it of any relief. The High Court held that

A the SPAs were genuine sale transactions and dismissed AJK's suit. The instant appeals were against that decision.

Held, unanimously allowing the appeals and setting aside the High Court's decision:

B

(1) The High Court's decision was plainly wrong. There was clearly insufficient judicial appreciation of the evidence. The trial judge appeared to have accepted the respondents' explanations for individual unusual features of the transactions without adequately considering C whether those explanations, viewed collectively, presented a coherent and credible alternative to the illegal moneylending allegations. The cumulative effect of the numerous suspicious circumstances identified by AJK was not given due weight in the overall analysis (see paras 136–137).

D (2) AJK had successfully established that the 16 SPAs were sham transactions designed to disguise illegal moneylending arrangements in contravention of the Moneylenders Act 1951. The lands were provided as security for loans rather than being the subject of genuine sales with repurchase options. The trial judge's conclusion that these were genuine commercial E transactions could not be sustained in light of the overwhelming evidence of suspicious circumstances and the implausible explanations offered by the respondents for the numerous unusual features identified by AJK (see paras 138–139).

F (3) The present case exhibited virtually all of the indica identified in *Mahmood bin Ooyub v Li Chee Leong and another appeal* [2020] 6 MLJ 755 (CA) which established comprehensive guidelines for determining whether a transaction was genuine or a sham designed to circumvent the Moneylenders Act 1951. Applying those guidelines to the present case, the court found, inter alia, the following suspicious circumstances and G unusual features, which when viewed collectively, pointed inexorably to the conclusion that these were sham transactions designed to disguise illegal moneylending arrangements: (a) AJK was directed to use the services of Pannir (who was acting for the lenders) with no separate legal representation. AJK was made to sign multiple documents H simultaneously without receiving copies thereof. The transactions involved complex deduction arrangements instead of straightforward purchase price payments; (b) the properties were transferred long after the SPAs were executed and AJK had remained in possession throughout; (c) none of the lenders, who were characterised as givers of the option to I purchase to AJK, had signed the LOPs. Pannir, during cross-examination, could not give a reasonable explanation for the LOPs not being signed. The lenders' case was that they had never met anyone representing AJK and had no knowledge of the LOPs and that all matters pertaining to the 16 SPAs were wholly handled by Pannir; (d) it was

highly irregular that a term as fundamental as a re-purchase option was not incorporated into the SPAs themselves. The artificial separation of the LOP terms from the SPAs suggested a deliberate attempt to create documentation that could be introduced or modified independently of the main transaction documents. There was also no evidence of any rental payments having been made by AJK to the lenders under the supposed LOPs; (e) there was irreconcilable contradiction between the SPAs, that required vacant possession to be given upon execution, and the LOPs, that purportedly allowed AJK to remain in occupation until the lands were repurchased; (f) the pattern of entering into SPAs every three months was commercially inexplicable if these were genuine property sales. The timing coincided precisely with the quarterly interest payment obligations under the alleged loan arrangements, strongly suggesting that the properties were being progressively pledged as additional security to cover mounting interest liabilities; and (g) the transactions did not conform to normal conveyancing practice. The stated purchase prices in all the 16 SPAs were paid to AJK in one lump-sum without any loan facilities being applied for (see paras 43, 45–49, 51, 63–65, 83–84, 92 & 95).

(4) The LOPs were a fabrication and an afterthought created to provide false legitimacy to what was, in substance, an illegal moneylending arrangement. The trial court erred in treating the LOPs as genuine because of its inclusion in Part B of the common bundle of documents. The Part B classification merely established that the document existed and did not establish when or why the document was created or whether it represented genuine commercial arrangements. The fabrication allegation, therefore, remained a live issue notwithstanding the inclusion of the LOP in Part B (see paras 72–75 & 77–78).

(5) The scheme and object of the Moneylenders Act 1951 was to protect borrowers from being exploited by unlicensed moneylenders. The duty to comply with the licensing requirements under the Moneylenders Act was placed squarely upon the lender, not the borrower. The lenders, as alleged unlicensed moneylenders, bore the primary responsibility of ensuring compliance with the statutory scheme. Hence, AJK could not be held to be equally at fault with the lenders and were entitled to seek relief against them despite the illegality of the transactions (see paras 113–119).

[Bahasa Malaysia summary

Perayu dalam Rayuan 995 dan 1000 ('AJK') amat memerlukan dana dan telah menghubungi responden pertama ('Pannir') untuk membantu mendapatkan pembiayaan tersebut. Pannir berjaya mendapatkan responden ketiga hingga kesembilan dalam Rayuan 995 dan responden ketiga hingga keenam dalam Rayuan 1000 ('pemberi pinjaman') untuk memberikan pinjaman dalam

jumlah berbeza-beza kepada AJK dari semasa ke semasa apabila diperlukan. Sebagai balasan, AJK bersetuju untuk menggadaikan tanah-tanahnya sebagai cagaran dan turut bersetuju membayar faedah pendahuluan ke atas pinjaman tersebut serta yuran guaman kepada firma guaman Pannir sebelum setiap jumlah pinjaman dilepaskan. Pinjaman-pinjaman tersebut dijamin melalui perjanjian jual beli ('PJB'), keseluruhannya 16, yang disediakan oleh firma Pannir melibatkan tanah-tanah AJK bagi manfaat pemberi pinjaman. Harga belian di bawah 16 PJB tersebut berjumlah RM9.44 juta, namun daripada jumlah itu, AJK hanya menerima RM6,193,160. Baki sebanyak RM3,246,840 digunakan untuk pembayaran faedah pendahuluan dan yuran guaman. Apabila AJK kemudiannya mendapati bahawa beberapa bidang tanahnya di bawah PJB tersebut telah dipindahmilik kepada pemberi pinjaman, AJK telah menyaman Pannir, rakan kongsi firma guamannya (responden kedua) serta semua pemberi pinjaman, dengan mendakwa bahawa PJB tersebut bukanlah transaksi jual beli tanah yang tulen tetapi merupakan sebahagian daripada suatu skim pemberian pinjaman wang secara haram yang melanggar Akta Pemberi Pinjam Wang 1951. Dalam pembelaan mereka, Pannir dan responden kedua mengekalkan bahawa 16 PJB tersebut adalah transaksi jual beli yang sah memandangkan setiap satu daripadanya disertakan dengan dokumen opsyen untuk membeli ('DOM') yang membolehkan AJK terus berada dalam milikan tanah tersebut dan menyewanya daripada pemberi pinjaman bagi tempoh tertentu sambil membuat bayaran ke arah pembelian semula tanah tersebut. Responden-responden berhujah bahawa jika mahkamah mendapati bahawa urusan antara pihak-pihak adalah haram, maka mahkamah juga harus mendapati bahawa AJK turut bersubahat dalam perbuatan haram tersebut dan oleh itu tidak berhak mendapat sebarang relif. Mahkamah Tinggi memutuskan bahawa PJB tersebut merupakan transaksi jual beli yang tulen dan menolak saman AJK. Rayuan-rayuan ini adalah terhadap keputusan tersebut.

Diputuskan, sebulat suara membenarkan rayuan-rayuan dan mengenepikan keputusan Mahkamah Tinggi:

(1) Keputusan Mahkamah Tinggi adalah nyata salah. Terdapat kekurangan penilaian kehakiman yang mencukupi terhadap keterangan. Hakim bicara kelihatan menerima penjelasan para responden berhubung ciri-ciri luar biasa dalam transaksi tersebut secara berasingan tanpa menimbangkan sama ada penjelasan-penjelasan itu, apabila dilihat secara keseluruhan, membentuk satu alternatif yang selari dan boleh dipercayai terhadap tuduhan pemberian pinjaman wang haram. Kesan kumulatif daripada pelbagai keadaan mencurigakan yang dikenal pasti oleh AJK tidak diberikan pertimbangan sewajarnya dalam analisis keseluruhan (lihat perenggan 136–137).

(2) AJK telah berjaya membuktikan bahawa 16 PJB tersebut merupakan transaksi olok-olok yang direka untuk menyelindungkan satu susunan

pemberian pinjaman wang haram yang melanggar Akta Pemberi Pinjam Wang 1951. Tanah-tanah tersebut sebenarnya dijadikan sebagai cagaran pinjaman dan bukannya objek jual beli sebenar yang disertai pilihan beli semula. Kesimpulan hakim bicara bahawa transaksi-transaksi tersebut adalah urus niaga komersial tulen tidak dapat dikekalkan memandangkan wujudnya keterangan yang amat kukuh mengenai keadaan-keadaan mencurigakan berserta penjelasan para responden yang tidak munasabah terhadap pelbagai ciri luar biasa yang dikenal pasti oleh AJK (lihat perenggan 138–139).

(3) Kes ini menunjukkan hampir kesemua indicia dalam kes *Mahmood bin Ooyub v Li Chee Leong and another appeal* [2020] 6 MLJ 755 (MR) yang telah meletakkan garis panduan komprehensif bagi menentukan sama ada sesuatu urus niaga adalah tulen atau merupakan satu rekaan untuk mengelakkan pemakaian Akta Pemberi Pinjam Wang 1951. Dengan menerapkan garis panduan tersebut kepada kes ini, mahkamah mendapati, antara lain, wujudnya beberapa keadaan mencurigakan dan ciri-ciri luar biasa yang apabila dilihat secara keseluruhan, membawa kepada kesimpulan tidak dapat dielakkan bahawa urus niaga tersebut adalah direka untuk menyamari suatu transaksi pemberian pinjaman wang yang menyalahi undang-undang: (a) AJK telah diarahkan untuk menggunakan khidmat Pannir (yang bertindak bagi pihak para pemberi pinjam) tanpa adanya wakil peguam yang berasingan. AJK turut dipaksa menandatangani pelbagai dokumen secara serentak tanpa diberikan salinan. Transaksi tersebut juga melibatkan susunan potongan harga yang kompleks dan bukannya pembayaran harga belian secara terus; (b) hak milik ke atas hartanah-hartanah tersebut hanya dipindahkan lama selepas PJB dimeterai dan AJK kekal berada dalam penguasaan sepanjang masa tersebut; (c) tiada seorang pun daripada para pemberi pinjam yang kononnya adalah pihak yang memberikan opsyen untuk membeli (DOM) kepada AJK telah menandatangani DOM tersebut. Ketika pemeriksaan balas, Pannir tidak dapat memberikan penjelasan munasabah mengapa DOM tersebut tidak ditandatangani. Kes para pemberi pinjam adalah bahawa mereka tidak pernah berjumpa sesiapa yang mewakili AJK, tidak mengetahui kewujudan DOM dan bahawa semua urusan berkaitan 16 PJB tersebut diuruskan sepenuhnya oleh Pannir; (d) adalah sangat tidak lazim bahawa suatu terma sepenting opsyen beli semula tidak dimasukkan ke dalam PJB itu sendiri. Pemisahan antara syarat DOM dan PJB menunjukkan suatu cubaan sengaja untuk mewujudkan dokumentasi yang boleh diperkenalkan atau diubah suai secara bebas daripada dokumen transaksi utama. Tiada juga bukti bahawa sebarang bayaran sewaan telah dibuat oleh AJK kepada para pemberi pinjam di bawah DOM yang dikatakan itu; (e) terdapat percanggahan yang tidak dapat diharmonikan antara PJB, yang mensyaratkan penyerahan milikan kosong pada masa pelaksanaan, dan

DOM yang didakwa membenarkan AJK kekal menduduki tanah sehingga pembelian semula disempurnakan; (f) rutin kemasukan PJB setiap tiga bulan adalah tidak munasabah dari sudut komersial sekiranya ia benar-benar merupakan jual beli hartanah. Masa tersebut bertepatan dengan tanggungjawab pembayaran faedah suku tahunan di bawah dakwaan urusan pinjaman, yang secara kuat menunjukkan bahawa hartanah tersebut digadai secara progresif sebagai cagaran tambahan bagi menampung liabiliti faedah yang semakin meningkat; dan (g) transaksi-transaksi tersebut tidak mematuhi amalan konvensional penyampaian hak milik. Harga belian yang dinyatakan dalam kesemua 16 PJB telah dibayar kepada AJK secara sekaligus tanpa sebarang kemudahan pinjaman dipohon (lihat perenggan 43, 45–49, 51, 63–65, 83–84, 92 & 95).

(4) Surat opsyen untuk membeli ('DOM') tersebut adalah satu rekaan dan suatu pemikiran kemudian yang diwujudkan bagi mewujudkan kesahihan palsu kepada suatu urusan yang pada hakikatnya merupakan satu skim pinjaman wang haram yang bertentangan dengan Akta Pemberi Pinjam Wang 1951. Mahkamah perbicaraan telah tersilap dalam menerima DOM sebagai dokumen tulen hanya kerana ia dimasukkan dalam Bahagian B ikatan dokumen bersama. Pengelasan Bahagian B hanya membuktikan kewujudan dokumen tersebut, tetapi tidak membuktikan bilakah ianya diwujudkan, mengapa ianya diwujudkan atau sama ada ianya menggambarkan urusan komersial yang sebenar. Justeru, dakwaan rekaan kekal sebagai isu yang sah untuk dipertimbangkan walaupun DOM dimasukkan dalam Bahagian B (lihat perenggan 72–75 & 77–78).

(5) Skim dan objektif Akta Pemberi Pinjam Wang 1951 adalah untuk melindungi peminjam daripada dieksploitasi oleh pemberi pinjam wang yang tidak berlesen. Kewajipan untuk mematuhi kehendak pelesenan di bawah Akta tersebut terletak sepenuhnya di atas bahu pemberi pinjam wang, bukan peminjam. Para pemberi pinjam, sebagai pemberi pinjam wang tidak berlesen yang didakwa, menanggung tanggungjawab utama untuk memastikan pematuhan kepada kehendak undang-undang. Oleh itu, AJK tidak boleh dianggap bersalah sama rata ('in pari delicto') dengan kesemua pemberi pinjam tersebut dan berhak mendapatkan relif terhadap mereka walaupun urusan berkenaan adalah urusan yang menyalahi undang-undang (lihat perenggan 113–119).]

Cases referred to

Browning v Morris (1778) 2 Cowp 790 (refd)

Global Globe Property (Melawati) Sdn Bhd v Jangka Prestasi Sdn Bhd [2020] 6 MLJ 333, CA (folld)

Ideal Advantage Sdn Bhd v Perbadanan Pengurusan Palm Spring @ Damansara and another appeal [2020] 4 MLJ 93; [2019] 1 LNS 894, CA (refd)

Kiriri Cotton Co Ltd v Dewani [1960] 1 All ER 177, PC (folld)
Mahmood bin Ooyub v Li Chee Loong and another appeal [2020] 6 MLJ 755, CA (folld)
Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors [2020] 12 MLJ 67, FC (refd)
PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals [2021] 2 MLJ 60, FC (folld)
Rasiah Munusamy v Lim Tan & Sons Sdn Bhd [1985] 2 MLJ 291, SC (refd)
Tang Lee Hiok & Ors v Yeow Guang Cheng [2022] 5 MLJ 584, CA (folld)
Triple Zest Trading & Suppliers & Ors v Applied Business Technologies Sdn Bhd [2023] 6 MLJ 818, FC (folld)
UEM Group Bhd (previously known as United Engineers (M) Bhd v Genisys Integrated Engineers Pte Ltd & Anor [2018] supp MLJ 363; [2010] 9 CLJ 785, FC (refd)
Yaacob bin Lebai Jusoh v Hamisah binti Saad [1950] 1 MLJ 255, CA (refd)

Legislation referred to

Contracts Act 1950 s 24
Moneylenders Act 1951 ss 2, 10OA, 15, 27(3)
Rent Restriction Ordinance [UG]

Appeal from: *AJ Kasturi Sdn Bhd v Pannirselvam a/l Mannar Ors* [2024] MLJU 1874 (High Court, Shah Alam)

Harihanan Tara Singh (with Tan Eng Seng) (TS Hariharan & Partners) in Appeal Nos B-02(NCVC)(W)-994–06 of 2024, B-02(NCVC)(W)-995–06 of 2024 and B-02(NCvC)(W)-1000–06 of 2024 for the appellant.
R Thayalan (with Ahmad Shahrizal bin Abdul Aziz, Chong Lip Yi and Nathaniel Low) (Ranjit Ooi & Robert Low)) (Mohd Faiz bin Abd Rahim (Rastam Singa & Co)) in Appeal Nos B-02(NCVC)(W)-994–06 of 2024, B-02(NCVC)(W)-995–06 of 2024 and B-02(NCvC)(W)-1000–06 of 2024 for the first and second respondent.
Mohd Faiz bin Abd Rahim (Rastam Singa & Co) in Appeal No B-02(NCvC)(W)-994–06 of 2024 for the third respondent.
Ringo Low Kim Leng (with Wan Nurfarah Izzah bt Wan Arifin) (Ringo Low & Assoc) in Appeal No B-02(NCvC)(W)-995–06 of 2024 for the third, fourth, fifth, sixth and eighth respondents.
Mohd Faiz bin Abd Rahim (Rastam Singa & Co) in Appeal No B-02(NCvC)(W)-995–06 of 2024 for the seventh and ninth respondents.
Ringo Low Kim Leng (with Wan Nurfarah Izzah bt Wan Arifin) (Ringo Low & Assoc) in Appeal No B-02(NCvC)(W)-1000–06 of 2024 for the third, fourth, fifth and sixth respondents.

Ahmad Fairuz JCA:

INTRODUCTION

[1] These three appeals arise from the decision of the learned judicial commissioner ('learned JC') of the High Court of Malaya at Shah Alam who dismissed the respective appellants' claims that 16 sale and purchase transactions involving properties previously owned by the appellants were illegal moneylending transactions disguised as genuine property sales.

[2] In the present case, there are three appeals before us filed by the appellants to appeal against the decision dated 31 May 2024 after full trial by the High Court wherein three suits were heard together, as follows:

	High Court Civil Suit No	Appeal No
1.	BA-22NCVC-494–10 of 2018	B-02(NCVC)(W)-995–06 of 2024
2.	BA-22NCVC-502–10 of 2018	B-02(NCVC)(W)-994–06 of 2024
3.	BA-22NCVC-514–10 of 2018	B-02(NCVC)(W)-1000–06 of 2024

[3] Appeals No 994 and 1000 was heard together with Appeal No 995, wherein Appeal No 995 is treated as the lead appeal. After a trial spanning 16 non-consecutive days with six witnesses called by the parties, the learned JC made various findings of fact and ultimately held that the appellants had failed to prove their case, concluding that the sale and purchase transactions were genuine based on the evidence presented.

[4] The appellants now appeal against the said decision, contending that the learned JC was plainly wrong in reaching her conclusion and had failed to appreciate the evidence in its totality.

BACKGROUND FACTS

[5] The appellant, AJ Kasturi Sdn Bhd, is a company involved in property investment. The first respondent ('Pannir'), is a practicing advocate and solicitor from the firm Tetuan Nurliny, Pannir Mannar & Co ('the firm'). The second respondent was a partner of the firm (collectively, 'Pannir' and the second respondent will be referred to as 'the respondents'). Pannir undertook to arrange financing for the appellant through various funders (listed in the table at para 13 below) who would later be identified as the other respondents.

[6] Between May 2014 and November 2015, the appellant entered into

seven separate loan transactions totalling RM9.44m. However, these transactions were structured not as conventional loans but as sale and purchase agreements ('SPAs') involving 16 different properties owned by the appellant.

The loan arrangements and transaction structure

[7] In May 2014, the appellant required a loan of RM2m. The appellant's representative, Mr Anthony Raj a/l Ayakaram Joseph ('PW1'/'Anthony') attended the office of the firm and met Pannir. Pannir informed Anthony that Pannir would be able to arrange a loan for the appellant from funders provided the appellant was able to provide a security in the form of property subject to the following terms:

(a) appellant is to pay interest at 4% per month;

(b) three months interest would be deducted at source;

(c) the firm's legal fees is payable by the appellant and would be deducted at source; and

(d) the appellant's directors were to attend the firm's office to sign documents before the release of the loan.

[8] Based on the said terms, for a loan of RM2m only the sum of RM1,745,000 would be released to the appellant upon deduction of the sum of RM255,000 being RM240,000 as interest for three months (RM80,000 per month x 3 = RM240,000) and RM15,000 as legal fees.

[9] On 14 May 2014, the appellant's directors (Kasturi and Catherine) attended the firm's office to sign several documents which was prepared beforehand by the firm in respect of Land No 1 Appeal 995. These documents included a sale and purchase agreement ('SPA'), memorandum of transfer ('MOT') and other related documents ('the SPA documents') in favour of the other respondents of Appeal 995.

[10] The directors of the appellant were also asked by Pannir to sign a written acknowledgement letter ('letter of acknowledgement') that the appellant had purportedly acknowledged the receipt of the deducted sums of RM255,000 in cash. None of the copies of these documents were handed by the firm or Pannir to the appellant or Anthony.

[11] The SPA documents were prepared after the original issue document of title ('IDT') was handed over to Pannir by Anthony. On or about 15 May 2014, Pannir caused the release of the sum of RM1,745,000 to the appellant after having deducted the sum of RM240,000 being three months interest at 4% per month for May to July 2014 and legal fees of RM15,000. For ease of

reference, the RM2m loan as illustrated in this paragraph and paras 7 to 10 above shall be referred as 'first loan'.

[12] Thereafter, the appellant continued paying the monthly interest of RM80,000 per month from August 2014 onwards for the first loan. The appellant required additional loans and continued taking loans from funders arranged by the firm on the similar terms and modus operandi of the first loan.

[13] For the additional loans, the appellant was requested to also sign a power of attorney and a trust deed in addition to the SPA documents. Particulars of the additional loans are as stated below:

Loan no	Securities/ subject matter of appeal	SPA date	Loan amount (purported purchase price) (RM)	Amount received by plaintiff after deduction (RM)	Deducted at sources (RM)	Funders (purported purchaser)
Second loan	Land No 2 Appeal 995	8 September 2014	2m	2.57m	430,000	Ng See Hua (D3) Ng Soon Team (D6) Lee Leong Huat (D5)
	Land No 3	8 September 2014	500,000			Lee Peng (D4)
	Land No 4 Appeal 995	8 September 2014	500,000			Teh Hock Chun (D7)
Third loan	Land No 1 Appeal 1000	12 December 2014	1m	540,000	460,000	Ng See Hua (D3) Ng Soon Team (D6)

Loan no	Securities/ subject matter of appeal	SPA date	Loan amount (purported purchase price) (RM)	Amount received by plaintiff after deduction (RM)	Deducted at sources (RM)	Funders (purported purchaser)
Fourth loan	Appeal 994 Land	20 March 2015	350,000	800,000	700,000	Ei Kian Seong (D9)
	Land No 5 Appeal 995	20 March 2015	250,000			Lee Peng Koon (D4)
	Land No 2 Appeal 1000	20 March 2015	500,000			Able Dynamic Trading Sdn Bhd (D7 suit 514)
	Land No 3 Appeal 1000	20 March 2015	400,000			Ng See Hua (D3)
Fifth loan	Land No 6 Appeal 995	9 June 2015	400,000	153,600	646,400	Khoo Say Poow (D8)
	Land No 7 Appeal 995	9 June 2015	400,000			Ng See Hua (D3)
Sixth loan	Land No 8 Appeal 995	17 September 2015	250,000	168,760	731,240	Ei Kian Seong (D9)
	Land No 4 Appeal 1000	17 September 2015	400,000			Tee Jen Tong (D6 Appeal 1000)
	Land No 5 Appeal 1000	17 September 2015	250,000			Tee Jen Tong (D6 Appeal 1000)

Loan no	Securities/ subject matter of appeal	SPA date	Loan amount (purported purchase price) (RM)	Amount received by plaintiff after deduction (RM)	Deducted at sources (RM)	Funders (purported purchaser)
Seventh loan	Land No 6 Appeal 1000	6 November 2015	160,000	215,800	24,200	Tee Jen Tong (D6 Appeal 1000)
	Land No 7 Appeal 1000	6 November 2015	80,000			Tee Jen Tong (D6 Appeal 1000)
		Total	7.44m	4,448,160	2,991,840	
		Total (inclusive of first loan)	9.44m	6,193,160	3,246,840	

(the first loan and the additional loans shall hereinafter be referred as 'the loans').

Pattern of escalating debt

[14] The appellant continued to service the monthly interest payments from August 2014 onwards. Based on the 48% annual interest rate, for the combined first and second loans totalling RM5m, the monthly interest payment amounted to RM200,000.

[15] As the appellant fell into arrears, Pannir exerted increasing pressure on Anthony to pledge additional properties as security for further loans to cover the outstanding interest. This created a vicious cycle where new loans were taken approximately every three months, primarily to service the accumulated interest from previous borrowings. Each subsequent loan resulted in increasingly higher deductions at source to cover outstanding interest payments.

[16] The pattern of transactions reveals a telling sequence: the second loan in September 2014, the third loan in December 2014, the fourth loan in March 2015, the fifth loan in June 2015, the sixth loan in September 2015, and the seventh loan in November 2015.

[17] In total, while the stated purchase consideration across all transactions was RM9.44m, the appellant received only RM6,193,160 after deductions totalling RM3,246,840.

Discovery of transfers and subsequent events

[18] Around early November 2017, Anthony discovered that some of the appellant's properties had been transferred to the names of the other respondents. The transfers occurred between October 2017 and July 2018, with 12 of the 16 properties being transferred during this period.

[19] On 23 November 2017, Anthony attended a meeting at Pappa Rich Restaurant in Setia Alam with Pannir and some of the other respondents or their representatives to inform them that the transfers were illegal. The meeting ended without resolution.

[20] Subsequently, the appellant engaged Messrs Miranda & Samuel to negotiate for the return of the properties. However, these negotiations ultimately failed, leading to the commencement of the present litigation.

The appellant's contention

Primary allegation — Sham transactions

[21] The appellant's primary contention is that the 16 SPAs are not genuine property sales transactions but rather elaborate shams designed to disguise illegal moneylending arrangements in contravention of the Moneylenders Act 1951. The appellant argues that these transactions were structured as security for loans, with the purported sale and purchase agreements serving merely as a façade to circumvent the statutory requirements governing moneylending.

Suspicious circumstances and unusual features

[22] The appellant identifies numerous suspicious circumstances and unusual features that collectively point to the sham nature of the transactions. These include the questionable letter of option to purchase ('LOP') which the appellant alleges was fabricated after the fact to provide post-hoc justification for the arrangements.

[23] The appellant highlights that none of the other respondents signed the purported LOP, despite being characterised as the option-givers. This absence of signatures on such a crucial document raises serious questions about its authenticity and the genuineness of the alleged repurchase arrangements.

[24] Furthermore, the appellant contends that the full purchase consideration was never actually paid by the other respondents. Instead, the transactions involved complex deduction arrangements at source, with the deducted amounts increasing progressively with each subsequent transaction to cover accumulated interest payments.

Pattern of transactions and timing

[25] The appellant emphasises the highly unusual pattern of entering into SPAs every three months, arguing that it defies commercial logic for a vendor to dispose of multiple valuable properties with such frequency unless compelled by financial distress. The appellant submits that the only logical explanation for this pattern is the need to service interest payments that became due quarterly.

[26] The appellant also points to the lack of genuine commercial purpose in the transactions, noting that vacant possession was never delivered to the purported purchasers, and the appellant remained in occupation of all properties throughout the relevant period.

Burden of proof and prima facie case

[27] The appellant contends that it has established a prima facie case demonstrating that the properties served as security for loans and that the 16 transactions were shams designed to disguise illegal moneylending arrangements. The appellant argues that the burden then shifted to the respondents to establish that the transactions were genuine property sales with repurchase options, which burden they failed to discharge.

Legal doctrines and class protection

[28] Regarding the doctrines of *in pari delicto* and *ex turpi causa non oritur actio*, the appellant argues that these do not apply where legislation is designed to protect weaker parties. The appellant relies on the Federal Court decision in *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals* [2021] 2 MLJ 60 which established that when the law seeks to protect a weaker party, such doctrines should not bar recovery.

[29] The appellant emphasises its position as the weaker party, having been desperate for funds, unable to negotiate terms, and entirely at the mercy of Pannir and the other respondents in structuring the transactions.

Pannir and second respondents' contentions

Genuine commercial transactions

[30] Pannir and the second respondent maintain that the 16 transactions were genuine sale and purchase agreements with legitimate repurchase options. They argue that Anthony approached Pannir seeking assistance to find potential buyers for the properties with options to purchase, specifically to raise funds urgently for procuring land from the Selangor State Government.

[31] According to their version, Pannir secured his existing clients as purchasers for the properties, and each SPA came with an individual option to purchase document setting out the agreement that the appellant would rent the properties for a specified period while making payments toward repurchase.

Sophisticated commercial parties

[32] The respondents characterise this as a transaction between sophisticated commercial parties, emphasising that the purchasers are businessmen and the appellant is an experienced property investor. They argue that the appellant had previously paid cash upfront for properties, distinguishing this case from situations involving vulnerable consumers.

[33] The respondents stress that the 16 SPAs were agreed upon and executed willingly by all parties, with the appellant's directors being fully aware of the nature of the documents they were signing. They point to the fact that draft SPAs were emailed to the appellant's directors beforehand to enable preparation of necessary company documents.

Post-transfer conduct and contemporaneous evidence

[34] The respondents place significant emphasis on the appellant's conduct after the property transfers in 2017. They highlight that the appellant engaged Messrs Miranda & Samuel to negotiate repurchase of the properties rather than immediately challenging the validity of the transfers on grounds of illegality.

[35] The respondents argue that throughout all correspondence between the parties' solicitors, there was no mention of illegal moneylending transactions. They contend that words such as 'interest' or 'repayment of loan' do not appear even in the appellant's own documents from this period.

The alleged scheme by the appellant

[36] The respondents contend that Anthony learned about potential moneylending defenses from a previous case involving one Gandhi Rajan in July 2014, before entering into the subsequent SPAs in the present case.

[37] The respondents argue that Anthony used this knowledge to devise a scheme whereby the appellant would enter into valid and genuine SPAs and thereafter claim them to be illegal moneylending agreements to unlawfully enrich themselves by recovering the properties without payment.

[38] The respondents argue that the doctrines of *in pari delicto* and *ex turpi causa non oritur actio* apply to bar the appellant's claim, maintaining that even if there was any illegality, the loss should lie where it falls and the appellant should not benefit from its own alleged wrongdoing.

ANALYSIS AND DECISION

The learned JC's approach

[39] Having carefully considered the extensive evidence presented at trial and the comprehensive submissions of all parties, we find ourselves compelled to disagree with the learned JC's conclusion that the transactions were genuine property sales.

[40] While we acknowledge the learned JC's diligent examination of the evidence, we are of the respectful view that her decision represents a case where appellate intervention is warranted under the 'plainly wrong' test.

[41] The learned JC appears to have approached the evidence in a compartmentalised manner, examining each unusual feature in isolation rather than considering the cumulative effect of the numerous suspicious circumstances.

[42] When confronted with allegations that an agreement is a sham designed to bypass mandatory statutory requirements, the court must comb the evidence carefully to identify gaps and unusual features that militate against a genuine transaction (see *Global Globe Property (Melawati) Sdn Bhd v Jangka Prestasi Sdn Bhd* [2020] 6 MLJ 333 (CA)).

Duty of court to determine sham transactions

[43] In *Mahmood bin Ooyub v Li Chee Loong and another appeal* [2020] 6 MLJ 755 (CA), this court established comprehensive guidelines for determining whether a transaction is genuine or a sham designed to circumvent the Moneylenders Act 1951. The facts are similar to the current appeal where it also involved money lending transactions which were guised genuine land transactions. Lee Swee Seng JCA (as he then was) held:

> [211] It therefore behooves the trial court, when there is the allegation that the agreement is a sham and a fabrication with the object of circumventing the law, to

examine the external evidence to see if the pieces in the puzzle would fit to from a coherent whole. The court must probe further to see if there are unusual features in the agreement as in here, a sale and purchase agreement and examine the circumstantial evidence such as the conduct of the parties that may arouse suspicion if not setting off the alarm bell.

[214] The court in scrutinising the transaction is duty bound to shine the search light of consistency and coherence and to see if there are contradictions that cry out for an explanation.

[215] No one factor is conclusive but if when taken together more questions are raised than there are satisfying answers, then in all probabilities the agreement is a sham and fabrication to camouflage and counterfeit the real transaction, which if allowed would contravene the law. The dressing up and decoy is deliberately if not delicately designed to escape detection by the enforcement authority and to deceive the weaker party when the crunch comes. The 'deal' is structured in such a way that the substance is shielded from detection.

[216] It is against that backdrop that this court had weighed in on the evidence of suspicious circumstances and unusual features, the tell-tale signs and the indicia for dismantling and discarding the facade and exposing the transaction for what it really is — an illegal moneylending transaction.

[217] The following are some of the suspicious circumstances and unusual features that would justify a further probing as pointing in the direction of a sham agreement like an SPA masking the illegal moneylending transaction:

(1) the borrower 'vendor' is directed to use the services of a solicitor acting for the lender purchaser' with no separate representation;

(2) some directions to make repayments into designated accounts unrelated to the SPA;

(3) the borrower 'vendor' is made to sign a slew of documents all in one go and often not given a copy;

(4) the purchase price is fixed by the lender 'purchaser' and commonly well below market price as reflected in the government stamp duty assessment;

(5) an unusually large amount of cash deposited and sometimes in many small denominations which source the lender 'purchaser' has difficulty explaining;

(6) the borrower 'vendor' not being kept posted as to the progress of the transaction and often realised it when it is too late that the property has been transferred into the name of a third party that he had never met before;

(7) the unusually high deposit paid of more than 10% of the purchase price and sometimes even the whole of the purchase price paid upon signing the SPA;

(8) the unusually long period of time, sometime as long as one year, for the lender 'purchaser' to complete the purchase when the purchase price is already below market value;

(9) the lender 'purchaser's' caveat may not be lodged until there is manifestation of objection by the borrower 'vendor' to the transfer; and

(10) the rather common acts of harassment and criminal intimidation when the borrower 'vendor' refuses to grant vacant possession because he had never intended to sell his property.

[218] The above list is by no means exhaustive and there will be doubtless variations of it and so one would have to look for the similarities in the differences and well as the differences in the similarities as human ingenuity knows no bound (the *Mahmood Ooyub* framework).

[44] This court further emphasised the need for careful examination of all facts in *Global Globe Property (Melawati) Sdn Bhd v Jangka Prestasi Sdn Bhd* and held that:

[23] Whenever an allegation is made that an agreement and related documents prepared are a sham to camouflage what the law specifically prohibits; the court must tread cautiously and comb carefully the evidence presented. It is only to be expected that generally all tracks would be covered so as not to leave behind anything coming close to resemble a smoking gun.

...

[25] To wring one's arm in despair would be to allow the law to be ridiculed and rendered toothless.

Application of the Mahmood Ooyub framework to the present case

[45] Applying the comprehensive framework established in *Mahmood bin Ooyub* to the present case, we find that numerous suspicious circumstances and unusual features, viewed collectively, point inexorably toward the conclusion that these were sham transactions designed to disguise illegal moneylending arrangements. The present case exhibits virtually all of the indicia identified in *Mahmood bin Ooyub*.

(i) Use of single legal representation

[46] Most significantly, the appellant was directed to use the services of Pannir, who was acting for the alleged purchasers, with no separate legal representation. The appellant was made to sign multiple documents simultaneously without receiving copies. The transactions involved complex deduction arrangements rather than straightforward purchase price payments.

[47] The properties were transferred long after the SPAs were executed, and the appellant remained in possession throughout, never having intended to genuinely sell the properties.

(ii) Letter of option to purchase (LOP)

[48] The LOP stands out as a particularly problematic document. It was a critical document that was relied upon by the other respondents. The fact that none of the other respondents, who are characterised as the option-givers, signed this crucial document is troubling. In genuine commercial transactions involving repurchase options, one would expect all parties to execute such agreements to ensure enforceability and clarity of terms.

[49] Pannir's inability during cross-examination to provide reasonable explanations for the absence of signatures on the LOPs severely undermines the credibility of the respondents' version of events. The suggestion that the other respondents were unaware of the LOP's existence further compounds the implausibility of the alleged genuine repurchase arrangements.

[50] The main terms of the LOPs granted by the other respondents to AJ Kasturi are as follows:

(a) an option for the appellant to purchase the lands within 40 months from the dates of the transactions;

(b) the appellant to pay monthly consultation fees; and

(c) the appellant were entitled to continue to occupy the lands based on monthly rentals.

[51] The other respondents' case is that all matters pertaining to the 16 lands transactions were undertaken by Pannir and the other respondents have not met the appellant at all material times. All arrangements and documentations of the SPA documents including disbursement of the stated purchase consideration, collection of rentals, all documentations whatsoever pertaining to the lands are all undertaken by Pannir. The other respondents' case is also that they have not seen the LOP and do not have any knowledge pertaining to the purported 'consultation fees'.

[52] The learned JC held that the purported LOP is not fabricated. However, the learned JC did not make a finding that the LOP is valid and that the contents are true, even though the learned JC relied heavily on the LOP to conclude that the sale and purchase are genuine transaction. The learned JC seems to have placed undue weight over the fact that the LOPs were in Bundle B of the documents filed in court.

A **[53]** Having carefully examined all the evidence presented during trial, including the testimony of witnesses and the documentary evidence, this court finds that the LOPs are questionable documents that lack the hallmarks of genuine commercial arrangements.

B **[54]** The evidence overwhelmingly demonstrates that these documents were crafted as afterthought instruments to provide retrospective justification for what were, in substance, illegal moneylending transactions.

C Questionable nature

[55] The most compelling evidence of the LOPs' questionable nature emerged during the cross-examination of Pannir, who admitted to preparing these documents. When confronted with documentary evidence, Pannir was
D unable to provide any coherent explanation for how an LOP dated 8 September 2014 made reference to a SPA dated 20 March 2015. This time-based impossibility is the result of reconstruction of documents, where predetermined dates from existing transactions were mistakenly incorporated into supposedly contemporaneous LOPs.

E

[56] Pannir's attempt to characterise this as a mere 'mistake' is unconvincing. As the court observed during proceedings, even accepting the possibility of clerical errors, the nature of this particular error reveals the true character of these documents and raises a red flag over the provenance of the document.

F

No signature of option-givers

[57] The court finds it is commercially unlikely and legally suspicious that
G none of the 13 LOPs bear the signatures of the alleged option-givers. During cross-examination Pannir could not offer an explanation as to why all the other respondents in the 16 SPAs did not sign the LOP.

[58] The other respondents confirmed during cross-examination that they
H are unaware of the existence of the respective LOP when it was shown to DW3 and DW4 as well as DW2 as the representative of the other respondents.

[59] In genuine commercial transactions, parties invariably execute documents that create binding obligations, particularly when those obligations
I involve valuable property rights and substantial financial commitments.

[60] The complete absence of signatures from the purported purchasers, who were allegedly granting valuable repurchase options, defies commercial logic and established business practices.

[61] Pannir's inability to provide any reasonable explanation for this universal absence of signatures further undermines the credibility of these documents.

[62] This court rejects any suggestion that sophisticated commercial parties would enter into arrangements of this magnitude without proper execution of the governing documentation.

No reference to SPA

[63] The court finds it highly irregular that terms as fundamental as repurchase options were not incorporated into the SPAs themselves. In genuine property transactions, all material terms are typically consolidated into the principal agreement to ensure clarity, enforceability, and proper legal protection for all parties.

[64] The artificial separation of the LOP terms from the SPAs suggests a deliberate attempt to create documentation that could be introduced or modified independently of the main transaction documents.

[65] Furthermore, the court notes the irreconcilable contradiction between the SPAs' requirement for vacant possession upon execution and the LOPs' purported allowance for continued occupation by the appellant. Such fundamental inconsistencies would not exist in genuinely negotiated commercial arrangements.

For example, cl 7 of the SPA for Land No 2 Appeal 995 (refer: p 31, CCB-V2) which reads as follows:

> 7. VACANT POSSESSION Vacant Possession of the said Property shall be delivered to the Purchaser(s) upon execution of this Agreement.

[66] All notices for vacant possession are of similar terms. A further example of the inconsistencies can be seen in a notice for vacant possession issued on 3 October 2018 for Land No 2 in Appeal 995. It made no reference whatsoever to the LOP. The explanation offered when confronted during cross-examination of Pannir was that the notice did not make reference to the LOP is because the SPA and the LOP has been terminated.

[67] If the LOP was in existence at that material time, surely the firm would have referred to the LOP in the notice of vacant possession as the LOP purports to allow the occupancy of the appellant. Furthermore, the other respondents did not adduce any evidence to show that a tenancy agreement was prepared

and executed by the parties to justify the purported monthly rental collected by the firm on behalf of the other respondents.

No contemporary documents

[68] The court finds it significant that the LOPs are conspicuously absent from all contemporary documentation related to these transactions. The letter of acknowledgement, which was prepared contemporaneously with the transactions, makes no reference whatsoever to any option arrangements. This omission is particularly damning given that repurchase options would constitute material terms that any prudent party would document and acknowledge.

[69] The court further notes that during subsequent negotiations in 2017, when the appellant's legal representatives sought to recover the properties, Pannir admitted under cross-examination that he made no mention of the LOPs' existence. His explanation that the options had 'expired' is both convenient and implausible, as the existence of such arrangements would be relevant to any recovery discussions regardless of their expiry status.

No proof of delivery

[70] Pannir's claim that the LOPs were delivered by hand is unsubstantiated by any documentary evidence. In commercial transactions of this magnitude, parties invariably maintain records of delivery, acknowledgment receipts, or other evidence of document transmission. The complete absence of such evidence further undermines the credibility of these documents.

[71] The court also finds the alleged terms of the LOPs to be commercially improbable. The absence of any evidence of meetings, negotiations, or discussions between the principal parties regarding these option terms reinforces the conclusion that these were not genuine negotiated arrangements.

Finding on LOPs

[72] Having considered the totality of the evidence, this court finds that the LOPs were afterthought documents created to provide false legitimacy to what were, in substance, illegal moneylending arrangements.

[73] The court therefore finds that the LOPs are fabricated documents that cannot support any finding of genuine property transactions with repurchase options. Instead, they confirm that the entire arrangement was designed to disguise illegal moneylending activities behind a veneer of property transaction documentation.

(iii) The trial court's misplaced reliance on Bundle B classification

[74] The learned JC erred by treating the Bundle B classification as conclusive resolution of the fabrication issue, as seen in paras 93, 94, and 116 of the High Court grounds. This represents a critical misunderstanding of the procedural classification of documents system. An extract of the relevant parts of the JC's High Court grounds is reproduced as follows:

> Option to Purchase
>
> [89] AJ Kasturi alleged that the option to purchase was an afterthought, a shred of fabricated evidence to disguise illegal moneylending transactions.
>
> [90] However, Pannir contended that there was always an option to purchase for all 16 transactions. AJ Kasturi's payments would be monthly instalments, rental payments as the appellant occupied the properties, and legal fees to be paid to Pannir.
>
> [91] AJ Kasturi refuted Pannir and the other respondents contention as to the existence of the option to purchase as follows:
>
> > Q: When is the first time that Defendant referred to the allegation of 'Option to repurchase' or monthly rentals?
> >
> > A: The other respondents first raised this allegation when they filed their defences in these proceedings (refer to PW1's evidence at p 137, encl 128).
>
> [92] Fabrication is a severe accusation.
>
> [93] The observation is that the option to purchase is in Part B in the common bundle of documents.
>
> [94] It is trite law that documents in Part B are not challenged regarding their authenticity. The need is only to prove the contents.
>
> [95] The case law referred to is the landmark Federal Court decision in *Jaafar bin Shaari & Anor (suing as administrators of the estate of Shofiah bte Ahmad, deceased) v Tan Lip Eng & Anor* [1997] 3 MLJ 693.
>
> [96] The fabrication issue is conclusively unresolved by categorising the option to purchase in Part B, common bundle of documents.
>
> [97] Looking at its contents, the main argument presented by AJ Kasturi was why the option to purchase remained unsigned by both AJ Kasturi and the other respondents.
>
> [98] DW1 testified that AJ Kasturi (PW2 and Catherine) did not sign the option to purchase.
>
> [99] He further explained that the option to purchase benefited AJ Kasturi compared to the other respondents.
>
> [100] AJ Kasturi adhered to the terms mentioned in the option to purchase, so there was no need to chase them to get it signed.
>
> [101] AJ Kasturi's conduct in appointing Messrs Miranda & Samuel to buy back the properties in 2017/2018 strengthened the existence of the option to purchase.

A [102] The other respondents also confirmed the option to purchase.

[103] The other respondents' conduct in lodging caveats in all 16 transacted properties also supported the existence of the option to purchase.

[104] The caveats were to protect the other respondents' interests in the interim, pending AJ Kasturi's exercise of the option to purchase.

B

[105] AJ Kasturi did not remove the caveats lodged by the other respondents.

[106] AJ Kasturi continued paying quit rent.

[107] AJ Kasturi failed to prove that they entered caveats, although PW1 testified doing the same.

C

[108] It is undisputed that six properties had been transferred to the other respondents by the end of October 2017.

[109] In 2017, AJ Kasturi engaged Messrs Miranda & Samuel to negotiate the repurchase of the properties.

D [110] Suppose the 16 properties were used as securities for illegal moneylending transactions, as AJ Kasturi alleged. In that case, it is implausible that AJ Kasturi did not inform Messrs Miranda & Samuel about this.

[111] Correspondence was taking place between Messrs Miranda & Samuel and Pannir regarding the repurchase arrangements of the properties.

E

[112] In all the correspondences, there was no mention of illegal moneylending transactions or any challenge to the validity of the sale and purchase agreements.

[113] This proved AJ Kasturi's actions were consistent with the option to purchase.

[114] The negotiations between AJ Kasturi and the other respondents for the buyback of the properties failed (refer to p 92, encl 135).

F

[115] After over six months, PW1 filed police reports alleging that the 16 property transactions were illegal moneylending transactions disguised as sale and purchase transactions.

G [116] After carefully reviewing all the facts and evidence, I make a finding of fact that the option to purchase is not fabricated.

[75] Part B classification merely establishes physical authenticity, meaning that the document exists, but it does not establish when the document was created, why it was created, or whether it represents genuine commercial arrangements. The fabrication allegation remains a live issue notwithstanding the document being put in Part B.

H

[76] It is our view that the learned JC was in error when she failed to address the proper issues in determining whether the LOPs were indeed fabricated. The considerations between paras 97 to 115 in the above High Court grounds do not address the fabrication allegation but merely touches on the finding that the transactions were not money laundering related transactions.

I

[77] A document may be authentic but can be a fabrication. Authenticity does not nullify the allegation that the LOPs were fabricated to provide justification for the unusual sale and purchase arrangements.

[78] Classification of documents is designed for case management, not judicial determination. The mere classification cannot establish contemporaneous creation or genuine commercial intent, does not preclude challenges to timing, purpose, or commercial genuineness, and remains subject to subsequent judicial scrutiny on substantive grounds.

[79] Parties may agree to Part B classification for various strategic reasons including avoiding handwriting expert costs while reserving the right to challenge the document's commercial genuineness. Parties may also make tactical decisions to challenge the document's purpose and timing rather than its physical existence and focusing on proceedings while maintaining challenges to the document's legal significance. The motivations are myriad.

[80] The courts consistently apply the principle that substance must prevail over form. The classification system cannot override this fundamental principle. In *Ideal Advantage Sdn Bhd v Perbadanan Pengurusan Palm Spring @ Damansara and another appeal* [2020] 4 MLJ 93; [2019] 1 LNS 894 (CA) this court emphasised that instruments effected pursuant to illegal transactions constitute 'insufficient or void instruments' regardless of their formal appearance.

[81] The *Mahmood bin Ooyub* framework specifically require courts to look beyond documentation to examine 'suspicious circumstances and unusual features' that reveal sham arrangements. *PJD Regency* established that protective legislation requires courts to examine the true nature of transactions despite their documented form.

[82] The procedural classification of documents for pre-trial case management purposes cannot, and should not, be treated as conclusive evidence of their genuineness or contemporaneous creation.

(iv) Pattern and timing of transactions

[83] The pattern of entering into SPAs every three months is commercially inexplicable if these were genuine property sales. While it may not be an impossibility, however, when weighed with the factual backdrop of the claim and the surrounding facts supporting the complaint, we accept the submissions of the appellant that property investors do not typically dispose of multiple valuable properties with such mechanical regularity unless compelled by external pressures.

[84] The timing coincides precisely with the quarterly interest payment obligations under the alleged loan arrangements, strongly suggesting that the properties were being progressively pledged as additional security to cover mounting interest liabilities.

[85] This pattern is entirely consistent with illegal moneylending practices where borrowers are pressured to provide additional security as their indebtedness spirals beyond their capacity to service.

(v) The deduction arrangements

[86] The complex deduction arrangements at source provide perhaps the most compelling evidence of the sham nature of these transactions. In genuine property sales, purchasers pay the agreed consideration to vendors.

During cross-examination, Pannir confirmed as follows:

(a) the total stated purchase consideration in all 16 SPAs is RM9.44m;

(b) the firm deducted the sum of RM3,246,840 from the RM9.44m and released the sum of RM6,193,160 to the appellant; and

(c) the firm and Pannir in his personal account received repayment from the appellant as the total sum of RM2,844,600.

[87] In addition to the above, Anthony testified at paras 236 to 237 of his witness statement and based on Maybank clients' account cheques that the total sum paid from the firm's client's account to the other respondents are RM4,182,440 and the firm/Pannir retained the sum of RM1,909,000. This evidence was not challenged by the other respondents.

[88] We are satisfied that monthly repayment by the appellant and the deduction at source is towards payment of interest at 4% per month for the loans. The amount deducted is also consistent with interest payment at the rate of 4% per month. This can be illustrated based on the deduction pattern for land No 1 Appeal 995 wherein the deduction of RM240,000 being three months interest charges, is based on the following calculations:

(a) RM80,000 x 3 = RM240,000; and

(b) RM80,000 payable (4% = 2.5% + 1% + 0.5%) consists of:

(i) RM50,000 monthly (2.5%) for repurchase consideration;

(ii) RM20,000 monthly consultation fees (1%); and

(iii) RM10,000 monthly rental (0.5%).

[89] It is the finding of this court that the above breakdown clearly signifies

the interest element of the transactions. The 4% monthly interest calculated form the RM2m purchase consideration is documented with precision and amounts to RM80,000 per month. The above breakdown is not made by the appellant but is contained in the LOPs which the other respondents contend to be genuine and forms the basis of the bizarre arrangement.

[90] The deductions that increased progressively with each transaction bears no resemblance to normal commercial practice but is entirely consistent with interest calculations and fee structures typical of moneylending arrangements.

[91] The appellant's evidence clearly demonstrates how the deducted amounts escalated with each subsequent transaction, precisely tracking the accumulated interest liabilities under the alleged loans.

(vi) Retention of possession and control

[92] The undisputed fact that the appellant remained in possession and control of all 16 properties throughout the relevant period is fundamentally inconsistent with genuine property sales. While the other respondents argue this was pursuant to rental arrangements under the LOP, the absence of signed LOPs and the lack of evidence of rental payments by the appellant to the alleged purchasers seriously undermines this explanation.

[93] We cannot but echo the observations of this court in *Yaacob Bin Lebai Jusoh v Hamisah Binti Saad* [1950] 1 MLJ 255, where this court held that where the appellant remained in possession of property it was 'consistent with an arrangement between the parties that the transfer of the land was only a transfer as security ...'.

(vii) One-off full payment

[94] It can be seen that the manner on which the properties were transacted and paid for do not conform with the normal practice of a standard conveyancing practice.

[95] There was a one-off full payment of the stated purchase price for 16 transactions as opposed to the standard 10% deposit and balance purchase price within three months. All the SPAs for the 16 transactions have similar terms with the first SPA for Land No 1 Appeal 995 in which all the other respondents coincidentally paid the full purchase price in one lump sum and without any loan facilities from a financial institution.

[96] However, there is no evidence before the court of the other respondents financial standings which support the ability to raise the stated purchase consideration in one lump sum payment.

[97] The above observations further support the argument that there was no genuine land transaction between the appellant and the other respondents. The red flags are too obvious for this court to ignore. The *Mahmood Ooyub* framework has been satisfied and we find no difficulty in finding that the SPAs were actually sham transactions which were actually illegal money lending activities.

Post-transfer conduct

[98] While the other respondents place considerable emphasis on the appellant's engagement of Messrs Miranda & Samuel to negotiate repurchase rather than immediately challenging the transfers, we do not find this conduct to be determinative.

[99] The appellant's initial attempt to recover the properties (the Papa Rich meeting) through negotiation does not preclude a subsequent challenge on grounds of illegality, particularly given the complex legal issues involved and the time required to obtain proper legal advice on the moneylending aspects.

[100] The absence of explicit reference to moneylending in the initial correspondence with Miranda & Samuel can be explained by the appellant's focus at that time on recovery through negotiation rather than litigation.

[101] The subsequent filing of police reports and commencement of legal proceedings demonstrates that the illegality allegations were not mere afterthoughts but represented the appellant's considered legal position after proper advice.

Application of pari delicto and ex turpi causa non oritur action doctrine

[102] Regarding the application of the doctrines of *in pari delicto* and *ex turpi causa non oritur actio,* we agree with the appellant's submission that these doctrines do not apply where legislation is designed to protect weaker parties.

Class protection principle

[103] This court finds that the doctrine of *in pari delicto* does not apply to the present case by virtue of the class protection principle established under Malaysian jurisprudence.

[104] The principle in respect of class protection statutes was discussed by the authors of *The Law of Contract, Butterworths Common Law Series* (1999) at pp 864–865. It reads as follows:

> 'Class Protection Statutes' If the claimant belongs to a class that is sought to be protected by the statute concerned, restitutionary recovery of benefits conferred pursuant to the statute is permitted. By virtue of statutory conferment, the Claimant is deemed not to be in pari delicto with regard to the party against whom recovery is sought. Such an intention on the part of the statute concerned may be either express or implied.

[105] The foundational case establishing this principle is the Privy Council case of *Kiriri Cotton Co Ltd v Dewani* [1960] 1 All ER 177 (PC). The plaintiff sub-lessee paid premiums that were illegal under the Ugandan Rent Restriction Ordinance. He later sought recovery of the premiums paid. The Privy Council allowed recovery on the basis that the Ordinance was a class protection statute intended to protect tenants from being exploited by landlords. Lord Denning, in delivering the Board's decision, established the conceptual basis for this exception:

> ... if as between the two of them (the contracting parties) the duty of observing the law is placed on the shoulders of the one rather than the other — it being imposed on him specially for the protection of the other — then they are not in pari delicto and the money can be recovered back ...

[106] This principle has deep historical roots, as observed by Lord Mansfield in *Browning v Morris* (1778) 2 Cowp 790 at p 792). His Lordship held:

> Where contracts or transactions are prohibited by positive statutes, for the sake of protecting one set of men from another set of men; the one from their situation and condition being liable to be oppressed and imposed upon by the other; there, the parties are not in *pari delicto*; and in furtherance of these statutes, the person injured after the transaction is finished and completed, may bring his action and defeat the contract.

[107] The Federal Court endorsed this principle in *Rasiah Munusamy v Lim Tan & Sons Sdn Bhd* [1985] 2 MLJ 291. The court held:

> Going back to the dispute on the validity and enforceability of the oral agreement under the Housing Developers legislation, the law on this point as a general rule is that although no action can arise from a prohibited and illegal act, *if a plaintiff can show that he is a member of the class for whose protection the statutory prohibition was imposed, then as an exception such a person can enforce rights or recover property transferred under the illegal transaction*.

[108] This principle can also be see applied by the Federal Court in *PJD Regency* where it held that when the law seeks to protect a weaker party, the

doctrine of *in pari delicto* does not apply.

[109] The Federal Court applied *Kiriri Cotton* and observed as follows:

> [65] The only issue before the Privy Council was whether the tenant/plaintiff, having engaged in an illegal transaction was entitled to recover back the premium. The Board observed that neither one of the parties thought that what they were doing was illegal. Lord Denning, who delivered the unanimous judgment of the Board, endorsed the general principle of law that where an illegal transaction has been completed and where parties are in pari delicto, the courts will not entertain a suit for recovery. His Lordship however added that where the party seeking recovery can show that he is not in pari delicto, the courts may be minded to order restitution.

[110] Most significantly, the Federal Court in *PJD Regency* in making reference to *Kirri Cotton*, emphasised the protective nature of social legislation and held:

> [68] We fully agree with and endorse the above passage. The Legislature in that case acknowledged that tenants are a weaker class as against landlords. The purpose of the legislation was thus to protect tenants from abuse. A tenant who is thus forced by the landlord to pay a premium so that he may secure a roof over his head cannot be assumed to be, in law, in pari delicto given his protected status.

[111] Further, at paragraph the court held:

> [71] We wholly echo the sentiment in *Kiriri Cotton* that the onus of compliance with the regulatory scheme of the housing legislation, being social legislation, is on the developers.

[112] It is our view that the Moneylenders Act 1951 is a class protection legislation. The Moneylenders Act 1951 is clearly protective in nature, as evidenced by its Preamble:

> An Act for the regulation and control of the business of moneylending, the protection of borrowers of the monies lent in the course of such business, and matters connect therewith.

[113] Thus, it's clear as day that the scheme and object of the Moneylenders Act 1951 is the protection of borrowers as a class of persons and the legislature has placed on the moneylender the responsibility of ensuring compliance with statutory licensing requirements and prescribed procedures.

[114] This court finds that the Moneylenders Act 1951, like the housing legislation in *PJD Regency* and the rent restriction ordinance in *Kiriri Cotton*, is a protective social legislation designed to safeguard borrowers from exploitation by unlicensed moneylenders.

[115] Thus, in the context of the Moneylenders Act 1951, which protects borrowers, the appellant cannot be held equally at fault and ought to be allowed to seek remedies.

[116] The duty of compliance with the licensing requirements under the Moneylenders Act 1951 is placed squarely upon the lender, not the borrower. The other respondents, as alleged unlicensed moneylenders, bore the primary responsibility for ensuring compliance with the statutory scheme.

[117] Following *Kiriri Cotton* and *PJD Regency*, this court holds that the appellant, being a member of the class protected by the Moneylenders Act 1951, is not *in pari delicto* with the other respondents and is therefore entitled to seek relief despite the alleged illegality of the transactions.

[118] The doctrine of *in pari delicto* cannot be invoked by the other respondents to shield themselves from the consequences of their non-compliance with the Moneylenders Act 1951, as this would defeat the protective purpose of the legislation.

[119] This court finds in favour of the appellant that the appellant is not *in pari delicto* and is not barred from pursuing its claim against the other respondents.

THE RESPONDENTS' COUNTER-ALLEGATIONS

[120] The respondents alleged that the appellant had devised and perpetrated a fraudulent scheme following their experience in the Gandhi Rajan litigation. According to the respondents, the appellants learned from the Gandhi Rajan proceedings that moneylending allegations could be successfully raised as a defence to what appeared to be genuine sale and purchase transactions. The respondents contended that, armed with this knowledge gained from Gandhi Rajan's lawyer's response dated 22 July 2014 (which preceded the second and subsequent transactions in the present case), the appellants deliberately and calculatedly entered into what were ostensibly valid and genuine sale and purchase agreements with the other respondents.

[121] The respondents characterised this as a deliberate attempt to exploit legal technicalities to defraud innocent parties who had entered into legitimate commercial transactions in good faith.

[122] The timing coincidence between the Gandhi Rajan correspondence in July 2014 and the subsequent SPAs does not, without more, establish a fraudulent intent on the appellant's part. More importantly, the evidence of the transaction structures, the pattern of deductions, the retention of possession,

and the numerous other suspicious circumstances point to a different conclusion entirely. We see no merit to the argument of the respondents.

SPAs being sham agreements — The consequence

[123] The fundamental principle governing the validity of contracts in Malaysia is enshrined in s 24 of the Contracts Act 1950, which provides:

> 24 What considerations and objects are lawful, and what not. The consideration or object of an agreement is lawful, unless —
>
> (a) it is forbidden by a law;
>
> (b) it is of such a nature that if permitted, it would defeat any law;
>
> (c) it is fraudulent;
>
> (d) it involves or implies injury to the person or property of another; or
>
> (e) the court regards it as immoral, or opposed to public policy.
>
> In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

[124] This provision establishes the absolute consequence that any agreement with unlawful consideration or object is rendered void ab initio.

[125] The regulatory framework for moneylending activities is governed by the Moneylenders Act 1951 which contains the following relevant definitions under s 2:

> 'moneylender' means any person who carries on or advertises or announces himself or holds himself out in any way as carrying on the business of moneylending, whether or not he carries on any other business;
>
> 'moneylending' means the lending of money at interest, with or without security, by a moneylender to a borrower;
>
> 'moneylending agreement' means an agreement made in writing between a moneylender and a borrower for the repayment, in lump sum or instalments, of money borrowed by the borrower from the moneylender.

[126] The Act further provides crucial provisions regarding unlicensed moneylending:

(a) s 10OA — Presumption as to the business of moneylending:

> Where in any proceedings against any person, it is alleged that such person is a moneylender, the proof of a single loan at interest made by such person shall raise a presumption that such person is carrying on the business of moneylending, until the contrary is proved.

(b) s 15 — Contract by unlicensed moneylender unenforceable:

> No moneylending agreement in respect of money lent after the coming into force of this Act by an unlicensed moneylender shall be enforceable.

(c) s 27(3) — Attestation requirement:

> Any moneylending agreement which is not attested in accordance with this section shall be void and have no effect and shall not be enforceable.

[127] As previously discussed, this court in *Global Globe Property (Melawati) Sdn Bhd*, apart from establishing the framework for identifying sham transactions designed to disguise illegal moneylending, the court held the sale and purchase agreement was illegal, null and void and unenforceable.

[128] In *Mahmood bin Ooyub* held that unlicensed moneylender cannot under the guise of not being covered by the Moneylenders Act 1951 take shelter in the freedom of contract in that parties can create contractual obligations not prohibited by the Act. The moment a court of law makes a finding that the transaction is moneylending and the fact that the lender is not licensed to lend with interest that makes the whole agreement no matter how it is structured, into an illegal moneylending agreement which is unenforceable under s 15 of the Moneylenders Act 1951.

[129] This court in *Tang Lee Hiok & Ors v Yeow Guang Cheng* [2022] 5 MLJ 584 in also dealing with sham sale and purchase agreements reinforced the principle that once illegal moneylending is established, the entire arrangement becomes null and void:

> Therefore, the instrument used to effect the transaction and the SPA is a sham transaction and being illegal, the natural consequence of it being null and void is inevitable as provided under the MLA. The first to the fourth defendants cannot claim restitution under ss 66 or 71 of the Contracts Act 1950 as they were aware of the illegality and cannot plead ignorance. To allow the first to the fourth defendant to claim restitution would be to allow them to benefit from the transaction that they had devised to camouflage their nefarious intention and that can only embolden unlicensed moneylenders.

[130] As the Federal Court emphatically stated in *Triple Zest Trading & Suppliers & Ors v Applied Business Technologies Sdn Bhd* [2023] 6 MLJ 818, the court will not render assistance to those who come before it with unclean hands. The consequences of engaging in sham arrangements designed to circumvent statutory prohibitions are both the invalidity of such arrangements and the denial of legal remedies to those who create them. This serves not only as punishment for illegality, but as a necessary deterrent to preserve the integrity of our legal and financial systems.

[131] Following the unanimous line of authorities from *Global Globe*, *Mahmood bin Ooyub*, *Tang Lee Hiok*, and the Federal Court decision in *Triple Zest Trading*, once a finding is made that there was moneylending activity by an unlicensed person, the entire sale and purchase arrangements entered for the 16 properties are null and void for illegality.

Judicial vigilance against sham arrangements

[132] The duty of judicial vigilance is particularly critical in transactions involving property and financial arrangements, where the potential for abuse is heightened and where vulnerable parties may find themselves with little alternative but to accede to arrangements dictated by those in superior bargaining positions. The Moneylenders Act 1951 exists to protect such vulnerable parties, and this protection cannot be circumvented through documentary artifice, however elaborate or superficially convincing.

The 'plainly wrong' test

[133] The established test for appellate intervention requires us to determine whether the trial court's decision was 'plainly wrong' in the sense of demonstrating insufficient judicial appreciation of the evidence.

[134] The Federal Court in *UEM Group Bhd (previously known as United Engineers (M) Bhd v Genisys Integrated Engineers Pte Ltd & Anor* [2018] supp MLJ 363; [2010] 9 CLJ 785, held that an appellate court will not generally intervene with the decision of a trial court unless the trial court is shown to be plainly wrong in arriving at its decision. The relevant excerpt is reproduced below:

> It is well settled law that an appellate court will not generally speaking, intervene with the decision of a trial court unless the trial court is shown to be plainly wrong in arriving at its decision. A plainly wrong decision happens when the trial court is guilty of no or insufficient judicial appreciation of evidence (see *Chow Yee Wah & Anor v Choo Ah Pat* [1978] 2 MLJ 41b; [1978] 1 LNS 32; *Watt v Thomas* [1947] AC 484; and *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 6 AMR 781; [2004] 4 CLJ 309).

[135] Similarly the Federal Court in *Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors* [2020] 12 MLJ 67 held that in applying the 'plainly wrong' test, a higher court can overturn a lower court's decision if it finds the lower court's factual findings to be demonstrably incorrect or unreasonable. This test essentially means that an appellate court will only interfere with a lower court's decision if it is so clearly wrong that no reasonable judge could have reached that conclusion based on the evidence presented.

[136] Having conducted our own careful examination of the extensive record, we are satisfied that the learned JC's conclusion cannot be sustained. Her decision was plainly wrong there was clearly insufficient judicial appreciation of evidence.

[137] The learned JC appears to have accepted the respondents' explanations for individual unusual features without adequately considering whether these explanations, viewed collectively, present a coherent and credible alternative to the illegal moneylending allegations. The cumulative effect of the numerous suspicious circumstances identified by the appellant was not given due weight in the overall analysis.

CONCLUSION

[138] For the foregoing reasons, we find that the appellant has successfully established that the 16 SPAs were sham transactions designed to disguise illegal moneylending arrangements in contravention of the Moneylenders Act 1951. The properties were provided as security for loans rather than being the subject of genuine sales with repurchase options.

[139] The learned JC's conclusion that these were genuine commercial transactions cannot be sustained in light of the overwhelming evidence of suspicious circumstances and the implausible explanations offered by the respondents for the numerous unusual features identified by the appellant.

[140] Accordingly, we allow the three appeals and the decision of the learned JC is set aside.

[141] We further direct that the issue of damages be taken and determined at the High Court.

[142] Consequently, there is ample reason to dismiss all the respondents' counterclaims.

Appeals allowed; High Court's decision set aside.

Reported by Ashok Kumar